

# Use of Tronox Settlement Funds to Address Navajo Area Uranium Mines Proposed Allocation Strategy

**USEPA Presentation for Navajo Nation EPA**

**September 2021**

# Briefing Objectives

Background – Tronox Settlements

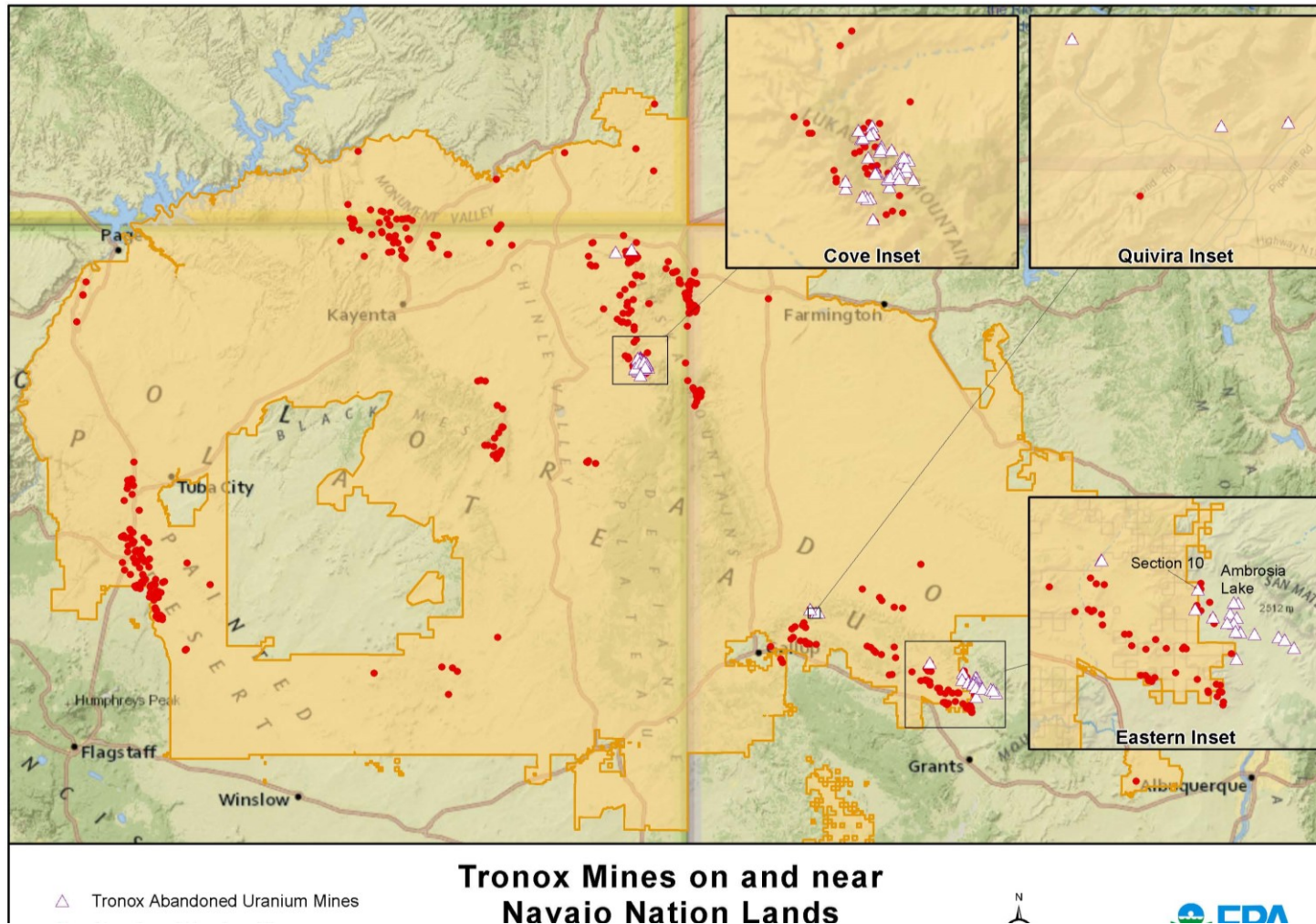
Prioritization Methodology

Proposed Allocation Strategy and  
Enforcement

Office of Inspector General (OIG) Audit

Request for Stakeholder Input

54 Tronox  
Navajo Area  
Uranium  
Mines  
R9 (Navajo  
Nation) - 34  
R6 – 20



# Current Status of Tronox NAUMs

- **Removal Site Evaluations** completed for all mines.
- **Draft Engineering Evaluation/Cost Analyses:**
  - Region 6** - Completed for all mines.
  - Region 9** – Due to be completed by end of CY2021--will not include recommended alternative.
- **Navajo Nation requested consultation** prior to USEPA identification of recommended alternatives.
- **High Priority Cross-Regional Site** (Section 32 (R9) Navajo allotment; Section 33 (R6) private land): interim action has been taken to reduce current risks, but the site is located close to residents

# Prioritization Methodology

- **Necessary for determining sequence of cleanup actions** (initial prioritization shared with NNEPA & NMED in **January 2021**).
- **Stakeholder Involvement:** Factors developed in meetings with USEPA Regions and Navajo Nation and New Mexico environmental agencies
- **Relative Ranking** does not replace the CERCLA risk assessment process
- **Factors considered:**
  - Land-Use (e.g., residential, cultural, ranching, grazing)
  - Impacts to Groundwater
  - Surface Radiation Above Background
  - Migration to Surface Water
  - Accessibility

# Tronox Bankruptcy and Related Actions

- **2011 Settlement Agreement with Tronox**

Resolved federal, state and tribal claims in Tronox bankruptcy;

Provided USEPA special accounts with initial settlement amount of \$12 million and 20% of any future fraudulent conveyance recovery to address Navajo Area Uranium Mines (NAUMs).

- **2014 Settlement Agreement for Fraudulent Conveyance**

Kerr-McGee and Anadarko Petroleum provided almost \$900 million for the Tronox NAUM's and \$90M to be placed in a separate special account for the Quivira Mines Site.

# Tronox Settlement NAUM Provisions on Prioritization and Allocation

- **Prioritization:** The 2011 Settlement CD states: “US EPA and the Navajo Nation Environmental Protection Agency (“Navajo EPA”) will continue their ongoing process of prioritizing response actions for the Navajo Area Uranium Mines and will determine lead responsibility for response action at each mine.”
- **Allocation:** Not directly addressed in the Tronox Settlements. (“transferred by US EPA to one or more special accounts with respect to the Navajo Area Uranium Mines within the Superfund to be retained and **used to conduct or finance response actions at or in connection with the Navajo Area Uranium Mines**, or transferred to the Superfund, if there is no remaining work at the Navajo Area Uranium Mines.”)



# Assumptions for Proposed Allocation Strategy

- **Insufficiency of Tronox Funds:** Approximately \$924 million available in Tronox Settlement funds for 54 Sites.
- **Current Estimate to Ensure that All 54 Sites are Fully Addressed:** USEPA preliminarily estimates that approximately \$1.5 billion will be needed to ensure that all 54 sites and can be fully addressed; however, this number could be higher or lower, since we have not completed the CERCLA response action selection process.
- **Degree of Remedy Uncertainty:** Will be resolved as remedy selection and cleanup move forward over a relatively lengthy period of time (a decade or more).
- **Other Financially Viable PRPs are Available:** Both private and federal parties have liability to cover remaining costs.

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# Assumptions for Proposed Allocation Strategy Continued

- **Prioritization vs. Allocation:** Prioritization establishes which sites to cleanup first based on risk factors; allocation is a decision on where the funds are to be spent.
- **Fair, Reasonable, in the Public Interest and Consistent with the CERCLA/NCP:** Allocation criteria should lead to PRP settlements that can be readily approved by a federal court.
- **Proportional Funding/Bankruptcy Claims Model:** The proposed proportional allocation strategy is similar to a bankruptcy court approach, appropriate when assets are insufficient to pay all claims. Proportional allocation would be used to achieve full funding at all sites and rough justice for all remaining viable PRPs.

# Proposed Allocation Strategy

- Tronox Settlement funds will fund **an equal percentage** of response action implementation costs for each mine grouping where viable PRPs exist and agree to perform work (**reimbursement up to a specified cap**). Tronox funds will cover all costs for the remaining orphan sites (3 smaller sites) – Section 32/33 and Section 10.
- In accordance with USEPA special account guidance, Tronox Funds will also be retained to cover USEPA and NNEPA **oversight costs, interim actions and post-removal site control**.
- Remaining funding or work will be **sought from viable PRPs**.
- **Proportional Allocation** would allow a percentage of response action implementation costs to be reimbursed by Tronox Settlement funds for each dollar spent by PRPs up to a specified cap.

# Proposed Enforcement Strategy

- **Additional Financially-Viable PRPs**
  - Former Operators - Mining Companies (Cyprus Amax & Rio Algom Mining)
  - Department of Energy, Successor to Atomic Energy Commission
  - Department of Interior, Bureau of Indian Affairs (BIA)
- **Region 6 issued CERCLA General Notice** to PRPs and Federal Agencies in July 2018
- **Region 9 plans to issue CERCLA General Notice** to PRPs and Federal Agencies by the end of September 2021.
- **2019 Court Decision in El Paso Natural Gas v. United States:** re Non-Tronox AUMs on Navajo - Allocated 65% liability to private operator and 35% to United States (decision was not appealed).
- **Settlements of US liability at Uranium Mines Sites:** In three settlements between 2011 and 2018, the US agreed to settle mining company contribution claims for roughly 25% - 50% of total Site response costs.
- **Allocation is Needed** to begin negotiations with PRPs so cleanup can begin.

# Office of Inspector General Audit

- **2017** – OIG initiated an audit of USEPA's use of the almost \$1 billion Tronox Funds (\$900 million for NAUMS; \$90 million for largest Tronox mine – the Quivira Mine Site)
- **2018** – OIG issued a report with deadlines based on USEPA timing estimates.
- **2020** – Regions 6, 9 and OMDP sent an update to OIG and stated that additional time was needed to complete prioritization and allocation.
- **January 15, 2021** – Prioritization list was submitted to OIG, NM, and NN.
- **December 31, 2021** – Region 9 to complete draft EE/CAs (without a recommended alternative) and USEPA to complete Funding Allocation Strategy.
- **May 2022** – Planned completion of final resource allocation.

# Key Points

- **Cleanups:** USEPA intends to address all 54 Tronox NAUM Sites using a combination of the Tronox funds and enforcement against non-Tronox viable PRPs.
- **Tronox Insufficiency & Viable PRPs:** While Tronox Settlement Funds are insufficient, financially viable PRPs are available to address the shortfall.
- **Regulatory Stakeholder Input:** USEPA is currently seeking input from the Navajo Nation and New Mexico regarding the proposed allocation strategy.
- **Prerequisite for Cleanup:** Allocation decisions are needed to get to cleanup.

# Next Steps

USEPA is seeking input from Navajo Nation and New Mexico on the proposed allocation strategy, which will inform our December 31, 2021 report to the Inspector General.

General Notice Letters—

Region 9 to issue General Notice Letters by the end of September 2021;

Region 6 has sent General Notice Letters.